

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

EDWIN BAKER,

Plaintiff and Appellant,

v.

AMERICAN HORTICULTURE SUPPLY,
INC. ,

Defendant and Respondent.

2d Civil No. B212975
(Super. Ct. No. 244149)
(Ventura County)

MODIFICATION OF OPINION
ON DENIAL ON REHEARING
[NO CHANGE IN JUDGMENT]

THE COURT:

The opinion filed herein on June 23, 2010, is modified as follows:

1. On page 15, line 4 of the first full paragraph after the word "verdict" delete the sentence beginning with " [I[t" and ending on line 8 with the word "[Citations.]"

2 On page 15, after the words "fn. omitted" add the following including footnote 7, which will require renumbering of all subsequent footnotes.

The application here of the ordinary definition of "willful" is supported by the judicial construction of Labor Code section 203, subdivision (a), which provides in relevant part: "If an employer *willfully* fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." (Italics added.) "The settled meaning of 'willful,' as used in section 203, is that an employer has intentionally failed or

refused to perform an act which was required to be done. [Citations.] '[T]he employer's refusal to pay need not be based on a deliberate evil purpose to defraud workmen of wages which the employer knows to be due.' [Citations.]" (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.)⁷

3 On page 16, before the word *Disposition* add the following:

We reject respondent's contention in its petition for rehearing that "conduct violating the Act is willful only if the manufacturer, jobber or distributor knows of its obligations but intentionally declines to fulfill them." The knowledge requirement would be difficult to prove and would encourage manufacturers to remain ignorant of their obligations under the Act. This would frustrate the legislative intent to provide "unique protection" to independent wholesale sales representatives. (§ 1738.10.) But a manufacturer's failure to comply with the Act would not be willful if the manufacturer proved that its failure was "the result of a good faith and reasonable belief the facts imposing the statutory obligation were not present." (*Kwan v. Mercedes-Benz of North America, Inc.* (1994) 23 Cal.App.4th 174, 185.) For example, a failure to comply would not be willful if the manufacturer reasonably and in good faith believed that a person did not qualify as a "wholesale sales representative" within the meaning of the Act. This interpretation "will not vitiate the intended deterrent effect of the [treble damages provision]." (*Ibid.*)

[There is no change in the judgment.]

Respondent's petition for rehearing is denied.

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⁷ The courts, however, have recognized that a finding of "willfulness" within the meaning of Labor Code section 203 may be negated by a reasonable, good faith belief in a legal defense to a wage claim. (*Amaral v. Cintas Corp. No. 2, supra*, 163 Cal.App.4th at p. 1201; *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 325; *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 8-9; see also Cal. Code Regs., tit. 8, § 13520.) Accordingly, we conclude that a finding of a willful failure "to pay commissions as provided in the written contract" (§ 1738.15) may be negated by a reasonable, good faith belief in a legal defense to a commissions claim.